

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DENNIS B. EVANSON,
Defendant.

ORDER
AND
MEMORANDUM DECISION

Case No. 2:05-CR-805-TC

In February 2008, Defendant Dennis Evanson was convicted of seven counts of tax evasion, twenty counts of aiding and assisting the filing of false tax returns, and one count of conspiracy to commit mail fraud, wire fraud, and to defraud the United States. He was sentenced to 120 months in prison followed by thirty-six months of supervised release. The court also ordered forfeiture of many of Mr. Evanson's assets, including real property, a vehicle, and money.

Mr. Evanson has filed an appeal with the Tenth Circuit Court of Appeals. But he is scheduled to report to the Federal Bureau of Prisons on September 26, 2008. Accordingly, he has filed a Motion for Release Pending Appeal. He has also filed a Motion to Stay Execution of Forfeiture. And he has requested that his self-surrender date be extended pending resolution of his motions.

Motion for Release Pending Appeal

To obtain release, Mr. Evanson must show by clear and convincing evidence that (1) he is

not likely to flee or pose a danger to the safety of any other person; and (2) that his appeal is not for purposes of delay, and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, a sentence that does not include imprisonment, or a reduced sentence to a term of imprisonment less than the total time already served plus the expected duration of the appeal process. 18 U.S.C. § 3143(b). The court finds that Mr. Evanson has not met his heavy burden of proof.

First, Mr. Evanson does pose a flight risk. Mr. Evanson, who was out on release pending trial and sentencing, has offered nothing more than the fact that he has not fled up to this point. Mr. Evanson is not a United States citizen. While he has family here in the United States, he also has family in Canada, where he is a citizen. He is facing an extended term of incarceration, the government has seized numerous real properties in which he has an interest, and the government has secured a money judgment against him in excess of \$2 million.

Second, the record does not support Mr. Evanson's unsupported claims that there is a substantial question concerning the government's execution of multiple search warrants, the court's denial of production of a Suspicious Activity Report, and the court's disqualification of Mr. Evanson's initial counsel, Mr. Wheeler, on the basis that Mr. Wheeler would become an unsworn witness. Mr. Evanson has not presented persuasive argument that the issues were close or that they could have been decided the other way.

For the foregoing reasons, Mr. Evanson's Motion for Release Pending Appeal (Doc. No. 592) is DENIED.

Motion to Stay Execution of Forfeiture

Mr. Evanson relies on Federal Rule of Criminal Procedure 32.2(d) to seek a stay of the

forfeiture pending appeal. That rule provides that, “If a defendant appeals from a conviction or an order of forfeiture, the court may stay the order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review.” The court finds that Mr. Evanson is not likely to prevail on the merits on appeal. Mr. Evanson has not made a showing that the property at issue is unique and cannot be replaced through reimbursement from the government if he succeeds on appeal. Moreover, the Government’s risk of loss due to declining market conditions and maintenance costs is reason for disposing of the forfeited assets as soon as possible.

For the foregoing reasons, Mr. Evanson’s Motion to Stay Execution of Forfeiture (Doc. No. 394) is DENIED.

Motion to Extend Self-Surrender Date

The court, having denied Mr. Evanson’s other two motions, declines to extend his self-surrender date. Accordingly, his Motion to Extend Self-Surrender Date (Doc. No. 604) is DENIED.

SO ORDERED this 22nd day of September, 2008.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
Chief Judge